ECCLESIASTICAL LAW.

The Rights of Clergymen, "Settled" as Rectors-What are They!

ar view of the great interest attached to Judge Ludlow's decision in the case of St. Clement's Church, published by us last Saturday, we give below an ably written article, by an eminent lawyer of this city. It will be found exceedingly interesting by all who have watched the progress of the difficulties in St. Clement's Church: --

This question is one of interest just now; and inasmuch as there seems to be difference of opinion with regard to the proper understanding of and application of the law governing the case, it may not be out of place to effer some suggestions which may bring out clearly the fact that the legislation of the Church was not designed to be the means, and in event of being properly administered will not have the result, of placing a rector at the mercy of the prejudices of his vestry and the precipitate exercise of arbitrary power on the part of his diocesan.

The learned judge who has granted a continuance of the injunction restraining the vestry of St. Clement's Church very pointedly asks these questions:-

"Can it be possible that any minister may be summarily ejected from his parish without

"Shall the civil law guarantee to the humblest citizens a hearing, and may an ordained and duly instituted minister of the Protestant Episcopal Church be denied a right as common as this one?"

In some quarters the answer is, "Yes, certainly. A rector has no rights which may not be overridden by the joint action of his vestry and his bishop, without redress." And some add, "It is a hard case, but the canons of the Church permit it."

It is just this last statement which is now denied; or, to put the matter in the form of a positive statement, "The canons of the Church are not to be construed as authorizing or permitting so flagrant an act of injustice."

Once for all, before showing proof of this, let it be distinctly understood that this question is entirely apart from the reasonableness or the unreasonableness of the desire of the vestry and the bishop to get rid of an objectionable rector or assistant minister. To specify the case which has brought this discussion before the public and into the courts: the clergy of St. Clement's may or may not be teaching or acting in conformity with the standards of their Church. If they are teaching and acting in conformity with those standards, they are not liable to ecclesiastical censure. If they are not so teaching and acting, they are liable. But this has not been proven the canonical way. To assume it on the part of the bishop is to prejudge the case. It may be that the clergy of St. Clement's ought to be displaced for teaching false doctrine and encouraging false practices. It may be, also, that these questions are of only secondary importance, and that the real motive underlying what has been made public is simply such a degree of personal dislike as to make it desirable that the clergy should leave the church. We may admit, for argument's sake, the truth of either or both of these views; and yet, whatever may be said of the right belonging to the vestry to say, "We wish you to go, and so far as in us lies we dismiss you and sever the ecclesiastical relationship you bear to us," so far as the Bishop's concurrence with that action of the vestry is concerned, we cannot but think it, so far as and in the mode in which it has been exercised, indefensible. If the assumption of the Bishop that he alone is the "ecclesiastical authority" mentioned in the canon be a valid assumption, his mode of exercising the powers of that authority will cause any man with self-respect to pause before he enters a profession which debars him from the right which even a common thief possesses—the right of being proven guilty before he is punished as guiltythe right of a fair hearing before his peers. The hot haste with which the "concurrence" of the Bishop in the action of the vestry was announced-within twenty-four hours after the action of the vestry-shows at least one thing to the settled clergy, and that is, that if the present laws of the Church permit them thus to be stricken down without a hearing, without at least some form of open judicial inquiry into the merits of any charges under which

are changed the better. But it is held that the Bishop has acted strictly in accordance with the law; that he is, the "ecclesiastical authority" upon whose breath hangs the destiny of every settled minister in his diocese whose vestry may choose to turn him adrift at a moment's

they may be laboring, the sooner these laws

Even in the ancient Church, where the bishops had far more power than they ever have had in the American Church, it was necessary for a bishop to have as assessors at least six bishops before proceeding against one of his presbyters, as Bingham shows in his "Antiquities," book 2, cap. 3, section 9. But the American Church has its own laws,

and by them must the case be ruled. What should and do govern the case of dismissing a minister from his cure, in the "Protestant Episcopal Church in the United

States of America?"

The answer is, "Principles of justice as embodied in laws set forth by canons or other authoritative formularies.'

The "principles of justice" which should govern such a case are thus stated by Mr. Murray Hoffman in his "Ecclesiastical Law in the State of New York; Pott & Arney, 1868," pp. 269, 270:-"When the sanction of the ecclesiastical authority is sought, a duty is imposed as well as a power conferred. It cannot concur upon any ex parts statements, or without an examination. The right to be heard is a common-law right, and must be observed before any penalty of any description can be lawfully inflicted. If the consequence of a dismission with concurrence is to

are observed. A competent authority to hear and decide, a proper reasonable notice of the matters objected to, an opportunity to meet and reply to them, are fundamental."

We have yet to learn that these fundamental things were deemed worthy of notice or practice by "the ecclesiastical authority" in "concurring" in the action of the St Clement's vestry.

But Mr. Hoffman proceeds: - "The opinion of that sound lawyer and canonist, Mr. G. M. Wharton, upon the case in Michigan, was that a vestry had no right to dismiss a rector without accusation or trial. The legislation of 1865 prevents the dismissal of a minister by a vestry with the assent of the bishop from being uncanonical, and relieves the parties from the penalties of the canon. I do not think, however, that it makes good a dismissal without trial, or that it dissolves the contract between bim and the parish. Such a result would be a violation of general principles, and, I think, the law of 1865 should be construed in subordination to these."

These statements, coming from such a source, are entitled to grave consideration. They fix the principles of equity governing such cases, and the only point open to question is whether Mr. Hoffman is right in assuming that the law of 1865 makes the "ecclesiastical authority" to reside in the bishop alone.

We admit that for certain acts of ecclesiastical authority the bishop of a diocese is absolutely competent by himself, without assessors or council of advice; but that he is so in the case under dispute is precisely what is in question. It must be noticed that where, as above, Mr. Hoffman writes "the dismissal of a minister by a vestry with the assent of the bishop," the canon of 1865, to which he refers, does not use the expression "the concurrence of the bishop" but "the concurrence of the ecclesiastical authority of the diocese;' and if it be said that this is a general expression, and is intended, of course, to mean the bishop if there be one, and, if not, then the Standing Committee, it is answered that there are other considerations which show that the bishop alone is not meant, but the bishop and assessors in a way which involves a fair hear-

But, to be perfectly explicit, we quote so much of the "law of 1865," above referred to, as bears upon this point. It is Title II, Can. 4, Sec. 1 of the Digest, and is headed "Of the Dissolution of a Pastoral Connection:"-

"Section 1. In case a minister who has been regularly instituted or settled in a parish or church be dismissed by such parish or church without the concurrence of the ecclesiastical authority of the diocese, the vestry or congregation of such parish or church shall have no right to a representation in the convention of the diecese until they shall have made such satisfaction as the convention may require; but the minister thus dismissed shall retain his right to a seat in the convention, subject to the approval of the ecclesiastical shall leave his congregation against their will without the concurrence of the ecclesiastical authority aforesaid; and if he shall leave them without such concurrence," etc.

The former part is the only one having a bearing upon the case at issue.

The canon implies, and only implies, that a 'regularly instituted or settled" minister can be dismissed with the "concurrence of the ecclesiastical authority of the diocese;" but it does not state how, or with what formalities, and it does not define who or what is, for purposes of such concurrence, the "ecclesiastical authority." Everything is in the most general possible terms, so far as the canon is concerned. But the canon itself points to an authoritative formulary of the Church in which, for purposes of such concurrence, the "ecclesiastical authority" is clearly defined. A regularly "settled" minister and a regularly "instituted" minister are, so far as the rights now under dispute are concerned, upon precisely the same footing, and by the terms of the canon.

By turning to the office of institution, in the Prayer-Book, we find two forms of the "Letter of Institution," one from the bishop and the other in case there be no bishop of the diocese at the time, from the clerical members of the Standing Committee.

That form of "Letter of Institution" given by the bishop ends thus, -"and in case of any difference between you and your congregation, as to a separation and dissolution of all sacerdotal connection between you and them, we, your bishop, with the advice of our presbyters, are to be the ultimate arbiter and judge.

That form of "Letter of Institution" which comes (in event of there being no bishop of the diocese) from the clerical members of the Standing Committee ends thus,- "and in case of any difference, etc., the ecclesiastical authority of the Church in this diocese (taking the advice and aid of a bishop) shall be the ultimate arbiter and judge."

In both of these forms one thing is evident. It is to be no "one man power" to which the sacred rights of the clergy are given over, as to an ultimate, irresponsible

"arbiter and judge." But as the first of these forms, i. e., the "Letter of Institution" given by the bishop, contains what is especially involved in this present case, we shall confine ourselves to its consideration.

"We, your Bishop, WITH THE ADVICE OF OUR PRESENTERY, are to be the ultimate arbiter and judge." The words emphasized above make all the difference in the world between an arbitrary exercise of personal prerogative by which a rector may be suddenly ernshed without appeal, and that exercise of impartial judicial prerogative which accords a rector a fair hearing before his peers; which is all that any reasonable man can ask, and which, we make bold to affirm, has not been given to the clergy of St. Clement's.

We gather, from the Institution Office. then, that the bishop and his presbyters, not dissolve and discharge the civil relations and the bishop alone, are "the ecclesiastical aucontracts of the parties, it can only be so thority of the diocese" contemplated by Title permitted when the essential rules of the law II, Canon 4, Sec. 1, whose "concurrence" is

necessary, in event of there being no specific diocesan canon, to give effect to the action of a vestry dismissing their rector, and the fact that the names of the clergy of St. Clement's were by the Bishop kept upon the roll of clergy entitled to seats in the convention after he had "concurred" in their dismissal, would seem to show that the above understanding of the law of the Church was latent in his own mind also, else; why were those who, according to the very terms of dismissal by the vestry and "concurrence" by the Bishop, had no ecclesiastical standing whatever in the Diocese of Pennsylvanis, admitted to be entitled to a seat and vote in her convention?

One thing is very certain. This matter is not simply one concerning the clergy of St. Clement's. It is a question involving the rights of every settled minister in the diocese; and, whatever may be its results in the case of Dr. Batterson and Dr. Stewart, if its ventilation and discussion terminate in the adoption by the Diocese of Pennsylvania of some such canon as that adopted in 1865 by the Diocese of Ohio, great good will have been accomplished, and vexing questions of prerogative and authority will be once and for all settled without the humiliating necessity on the part of churchmen to appeal to the civil courts to enforce in ecclesiastical matters the commonest principles of equitable fairness.

The following is the canon of Ohio, the italics being our own, as quoted by Murray

"Section 1. Whereas it is provided in Canon 4. Title II, of the Digest of Canons of the General Convention, that when a minister has been regularly settled in a parish or church, he shall not be dismissed without the concurrence of the ecclesiastical authority of the diocese; it is hereby provided that in cases of controversy between any rector or assistant minister of any church or parish which cannot be settled by the parties themselves, the said parties, or either of them, may make written application to the Bishop of the diocese, who shall thereupon nominate four presbyters and four laymen of the diocese, and cause a list of their names to be served upon the rector or assistant minister, and also upon the clerk or secretary of the vestry, upon one or more of the applicants on behalf of the congregation, who shall, within ten days after such service, return their respective lists to the Bishop, each party having the right of striking off the name of one clergyman and one layman; and should this right not be exercised, or both parties strike off the same names, then the bishop shall reduce the number in the manner above prescribed to four, three of whom shall constitute a quorum, and shall meet at such time and place as the Bishop may designate, and of which due notice shall be given to the parties concerned, in order that the grounds of the controversy may be fully stated and the case fully heard.

"Section 2. If it shall appear to a majority authority of the diocese. And no minister of the board thus summoned, after a full examination of the case, that there is no hope of a favorable termination of such controversy and that a dissolution of the connection is necessary, they shall recommend to such rector or assistant minister to relinquish his connection with such parish on such conditions as shall appear to them proper and rea-

> "Section 3. The said recommendation shall be submitted in writing, and in duplicate to the Bishop, who, if he shall clearly disapprove of the same, may set aside said recommendation, and nominate a new board, which shall proceed in the manner hereinabove mentioned, and whose recommendation and finding shall be final. The Bishop shall make known to the parties the said recommendation if not set aside, or if set aside, then the said final recommendation, within ten days after the receipt of the same, and he shall report all proceedings to the convention at its next annual meeting, with a statement of the grounds of his action in case he shall have disapproved of the first finding in any case as aforesaid.

"Section 4. Should the rector or assistant minister refuse to comply within ten days after the decision shall have been made known to him, he shall be liable to suspension from the exercise of all ministerial functions until he submit to such decision.

"Section 5. And if the vestry of the church or the congregation refuse or neglect to comply on their part with the decision aforesaid, the said parish shall be prohibited from a representation in the convention of the diocese, until they shall have performed their duty in accordance with the same."

May this canon, or one like it, speedily become naturalized in the Diocese of Pennsyl-

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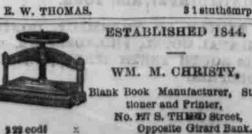
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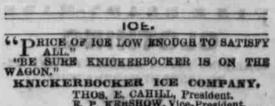
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